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IN THE SUPREME COURT

STATE OF ARIZONA

Sua Sponte Petition to Amend	)	
Rule 13.1(c), Arizona Rules of	)	Arizona Supreme Court
Criminal Procedure	)	No. _____
_____	)	

Pursuant to Rule 28(B), Rules of the Supreme Court, an amendment to Rule 13.1(c), Arizona Rules of Criminal Procedure, is proposed to change the reference in Ariz. R. Crim. P. 13.1(c) from 16.6(b) to 16.1(b), as set forth in Exhibit A hereto.

Rule 13.1(c) originally provided that an untimely information was “grounds for dismissal of the prosecution on motion of the defendant under Rule 16.7(b).” *See* Ariz. R. Crim. P. 13.1(c) (1973). In 1975, Rule 16.7(b) was repealed and renumbered as 16.5. Rule 16.5, in turn, was renumbered as 16.6 in 1993. Rule 13.1(c) was not amended to conform to either of the renumbered provisions until November 2009, when the reference to Rule 16.7(b) was amended to Rule 16.6(b).

Rule 16.6(b) provides for dismissal of a prosecution “on motion of the defendant” if the court finds “that the indictment, information, or complaint is insufficient as a matter of law.” In light of the apparent intent of Rule 13.1(c) to permit a motion to dismiss based on untimely filing alone, the court seeks comment as to whether the reference to Rule 16.6(b) should be changed to the

more generic Rule 16.1(b), which requires pretrial motions to be made no later than 20 days prior to trial.

DATED this \_\_\_\_\_ day of January, 2010.

By:

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Ellen M. Crowley,  
Chief Staff Attorney  
Arizona Supreme Court

## Arizona Rules of Criminal Procedure

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### Rule 13.1. Definitions; timeliness

**a.-b.** [No change in text.]

**c. Timeliness.** An information shall be filed in Superior Court within 10 days after the determination of probable cause or the defendant's waiver of a preliminary hearing. Failure to file a timely information shall be grounds for dismissal of the prosecution on motion of the defendant under Rule 16.1(b) ~~16.6(b)~~. Such dismissal shall be without prejudice except that if the prosecution is refiled, the time limits under Rule 8.2 shall be computed from the initial appearance on the original complaint.

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